



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,656	12/15/2000	An Shun Huang	NBI-858	1573

4955 7590 07/18/2002

WARE FRESSOLA VAN DER SLUYS &
ADOLPHSON, LLP
BRADFORD GREEN BUILDING 5
755 MAIN STREET, P O BOX 224
MONROE, CT 06468

EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

8

DATE MAILED: 07/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Y

AG-8

Office Action Summary

Application No.
09/738,656

Applicant(s)
Hwang et al

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 7, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

Art Unit: 1761

1. The 112 second paragraph rejection is maintained for claims 6,13,15,19 with respect to the term “caramel-like” because it is indefinite what such term constitutes and the specification does not define what is meant by “caramel-like”.

2. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes et al in view of “Original Chocolate Chip Cookies Recipes”.

Haynes et al disclose a flavor system having high chocolate flavor impact. The system has a high level of cocoa solids, a high level of a mixture of pyrazines and high ratios of certain dimethyl pyrazines to trimethyl and tetramethyl pyrazines. This chocolate flavor system is useful in formulating chocolate chips to use in chewy cookies. The chocolate chips comprise a confectionary fat, a sugar or sugar alcohol, emulsifiers, optional ingredients and the chocolate flavor system. A formulation for the chocolate chips is disclosed in column 12. The chips contains ethyl vanillin in an amount of .1% and the chips are used in a cookie formulation .

Haynes et al do not disclose a combination of small and larger chips in the cookies, the count per pound of the chip, the pH and the amount of the chips.

The Cookies Recipes disclose numerous variations to the recipes for chocolate chips cookies to obtain different flavor options. For example, there is a teaching of substituting milk chocolate M&M Baking Bits and Milk Chocolate Chips, Semi-Sweet Chocolate Chips and Milk Chocolate Chip, White Chips and Peanut Butter Chip and many other substitutions.

Art Unit: 1761

As the recipes show, there are many variations to making chocolate chip cookies and the flavor options are numerous. The addition of M& M Baking Bits and Milk Chocolate Chips would give different sizes and different flavor. It would have been obvious to one skilled in the art to use the Haynes et al chocolate chips in combination with other types of chips or chocolate products depending on the texture, flavor and taste desired. As the recipes show, there are many substitutions that can be done to obtain different flavor options; the particular flavor selected would have been a matter of preference. It would also have been obvious to produce the chips in any size desired. The size of the chips, the amount of chips used, the use of small or large or combination of both, the use of larger amount of one size of chips over the other size, or different flavor chips all depend on the taste perception and flavor desired and these variation would have been within the skill of one in the art as the recipes show there are many variations in the making of chocolate chips and the selection of any particular option would have been a matter of personal preference. The taste perception and flavor vary among individuals; therefore, it would have been obvious to vary the above parameters according to the taste and flavor desired. Since the chips disclosed in Haynes are chocolate chips, it is obvious the pH would be within the range as claimed.

3. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can

Application/Control Number: 09/738656

Page 4

Art Unit: 1761

normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

July 11, 2002


LIEN TRAN
PRIMARY EXAMINER
